



October 11, 2001

Ms. Victoria J. L. Hsu, P.E.
Executive Director
Texas Board of Professional Engineers
1917 IH 35 South
Austin, Texas 78741

OR2001-4612

Dear Ms. Hsu:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153162.

The Texas Board of Professional Engineers (the "board") received a request for all files kept on a specified individual by the board. You state that you have six closed enforcement files for which you have no objection to providing to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Pursuant to section 552.301(e)(1), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). The board received the request on August 3, 2001 and, therefore, had until August 24, 2001 to submit a copy of the requested information. Because the requested information was delivered on September 21, you failed to comply with section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301(e) results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302;

Hancock v. State Bd. of Ins., 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You argue that the submitted information is excepted under section 552.101 of the Government Code. Section 552.101 of the Government Code provides a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Therefore, we will address your asserted exception.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. Section 22A of article 3271a, V.T.C.S., the Texas Engineering Practice Act, provides as follows:

- (a) The Board shall keep an information file about each complaint filed with the Board relating to a license holder.
- (b) If a written complaint is filed with the Board relating to a license holder, the Board, at least as frequently as quarterly, shall notify the parties to the complaint of the status of the complaint until final disposition unless the notification would jeopardize an undercover investigation.
- (c) The Board shall adopt rules that permit the Board to receive and investigate confidential complaints against license holders or any other person who may have violated this Act. The Board shall maintain the confidentiality of the complaint during the investigation of the complaint.

Section 131.171(d) of title 22 of the Texas Administrative Code provides that "[t]he board shall maintain the confidentiality of the complaint during the investigation of the complaint," and that "[t]he investigation phase of the complaint shall be considered complete for the purposes of maintaining confidentiality when formal charges have been filed."

Thus, the board must maintain complaint information as confidential during the investigation stage. By rule, the board has determined that for purposes of maintaining the confidentiality of the complaint information, a complaint investigation is complete when formal charges are filed. You inform us that the submitted information relates to a pending investigation. Thus, we agree that, at this time, the board must withhold the submitted complaint file pursuant to section 552.101 of the Government Code in conjunction with section 22A of article 3271a, V.T.C.S.

You also assert that reference statements are excepted under section 552.101 of the Government Code in conjunction with section 26 of article 3271a, V.T.C.S. Section 26 of the Texas Engineering Practice Act provides:

A statement made by a person providing a reference for an applicant and other pertinent information compiled by or submitted to the Board relating to an applicant for licensure under this Act is privileged and confidential and may be used only by the Board or employees or agents of the Board who are directly involved in the application or licensure process. The information is not subject to discovery, subpoena, or other disclosure.

You contend that the highlighted comments from board staff regarding the reference statements are excepted under section 552.101 in conjunction with section 26 of article 3271a, V.T.C.S. After reviewing the submitted information, we agree that the highlighted comments are excepted under section 552.101 in conjunction with section 26 of article 3271a, V.T.C.S.

Next, you contend that social security numbers are made confidential by section 51.251 of the Occupations Code. A note following section 51.251 of the Occupations Code provides the following:

[t]he social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specified occupation or profession that is provided to the licensing agency is confidential and is not subject to disclosure under the open records law.

Occupations Code § 51.251. Therefore, an applicant's or licensee's social security number that is provided to the licensing agency must be withheld under section 552.101 of the Government Code in conjunction with section 51.251 of the Occupations Code. Accordingly, you must withhold the licensee's social security number under section 552.101 of the Government Code.

Finally, you request that this office issue a previous determination for the social security numbers of applicants and licensees and for reference statements. At this time, we decline to issue a previous determination for reference statements. However, you may rely on this ruling as a previous determination to withhold any requested social security numbers of applicants and licensees. *See* Gov't Code § 552.301(a). Therefore, the board need not seek a decision from this office as to future requests for social security numbers of applicants and licensees as long as the elements of law, fact, and circumstances of this ruling do not change so as to no longer support the findings set forth above. *See* Open Records Decision No. 673 at 7 (2001).

In conclusion, you must withhold the submitted complaint file under section 552.101 of the Government Code in conjunction with section 22A of article 3271a, V.T.C.S. You must also withhold the highlighted comments under section 26 of article 3271a, V.T.C.S. Further, you must also withhold the social security numbers of applicants and licensees pursuant to section 51.251 of the Occupations Code, and you may rely on this ruling as a previous determination for future requests for the social security numbers of applicants and licensees.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

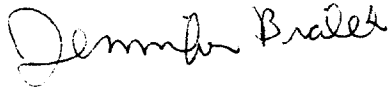
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/sdk

Ref: ID# 153162

Enc. Submitted documents

c: Ms. Leticia Martin, CLA
Paralegal
Shannon, Gracey, Ratliff & Miller, L.L.P.
777 Main Street, Suite 3800
Fort Worth, Texas 76102
(w/o enclosures)